

July 9, 2020

State Records Committee Meeting

Date: July 9, 2020

Time: 9:00 a.m. – 2:00 p.m.

Committee Members Present:

Kenneth Williams, State Archivist
David Fleming, Private Sector Records Manager
Holly Richardson, Citizen Representative
Patricia Smith-Mansfield, Chair, Citizen Representative
Tom Haraldsen, Media Representative
Nancy Dean, Political Subdivision Representative
Vacant, Electronic Records and Databases Representative

Legal Counsel:

Paul Tonk, Assistant Attorney General

Executive Secretary:

Rebekkah Shaw, Utah State Archives

Telephonic participation:

Lieutenant Kathy Berrett, Salt Lake County
Melanie Mitchell, Salt Lake County counsel
Lee Berrington, Salt Lake County
Jeff Glum

Others Present via Google Hangout:

Susan Mumford
Steven Onysko
Kevin Eastman, Weber Human Services
Daniel McDonald
Justin Anderson, Assistant Attorney General
Michelle Jenson, Weber Human Services
Matthew Pierce
Kendra Yates

Agenda:

- Four Hearings Scheduled
 - Mohavved v. Salt Lake County
 - Sullivan v. Utah Department of Corrections
 - McDonald v. Utah Department of Corrections
 - Singleton v. Weber Human Services

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- Business:
- Approval of June 11, 2020, minutes, action item
- SRC appeals received and declined, notices of compliance, and related action items
- Cases in District Court, report
- Other Business
 - Status of Committee vacancies, report
 - Committee member's attendance for the next meeting to verify the attendance of a quorum

Call to Order

The State Records Committee Chair, Patricia Smith-Mansfield, called the meeting to order at 9:03 a.m.

Business part 1 of 2

The Chair read a letter stating the meeting will be held electronically and telephonically without an anchor location pursuant to Utah Code 52-4-207(4). The public may monitor the meeting and any public wishing to comment in the meeting can submit their request to the Executive Secretary. The letter is active for 30 days.

Mr. Tonks, Committee legal counsel, provided training on the Open Public Meetings Act. He reviewed the changes made in the most recent legislative session.

Motion by Mr. Haraldsen to approve the June minutes. Seconded by Mr. Williams.

Vote: Aye 5. Nay: 0. Mr. Williams, Mr. Fleming, Ms. Richardson, Mr. Haraldsen, and Ms. Smith-Mansfield voted in favor of the motion.

Report on Appeals received

Ms. Shaw reviewed the status of appeals.

Report on Committee vacancy status

Mr. Williams reported the status of Committee vacancies.

Committee members' attendance polled for next meeting, format and quorum verification.

The Committee scheduled a second meeting in August for the 27th, and September 24th.

Motion by Mr. Williams to authorize the Chair to make the determination to continue electronic meetings with no anchor location for both August and September meetings. Seconded by Mr. Fleming.

Vote: Aye 5. Nay: 0. Mr. Williams, Mr. Fleming, Ms. Richardson, Mr. Haraldsen, and Ms. Smith-Mansfield voted in favor of the motion.

The Committee sauntered until 10am. Ms. Dean joined the meeting.

1. Mohavved v. Salt Lake County

The Chair announced the hearing and provided instructions and reviewed the procedures.

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Petitioner's Statements:

Mr. Movahhed stated he is requesting the records because he was moved from the prison general population to supermax and he wanted to know why. He stated he filed grievances and appeals but was not told why. He stated he was told he is a high ranking gang member. He needs the records to file with the ACLU.

Questions from Committee:

The Committee asked a clarifying question if the reason he was moved was because he is a high ranking gang member. Mr. Movahhed said he was told that is the reason, but the record stating this has not been released to him.

Respondent's Statements:

Ms. Mitchell introduced herself as the sheriff's office civil attorney. She introduced Kathy Berrett as the record officer and Lee Berrington as the supervisor.

Ms. Mitchell stated Lt. Berrett worked with the petitioner on this request. The records which have not been provided are committee notes. Policies were provided and information was provided through the grievance process. The committee notes are protected for the safety and security of the facility.

Witness Statements:

Lt. Berrett was sworn in as a witness by the Chair.

Lt. Berrett stated Mr. Movahhed requested copies of policies regarding segregation and the basis for which someone would be in administrative segregation at the facility. She stated he is a risk to others as an influential gang leader and has received information through grievance procedures that he is in administrative segregation non-punitively. She stated the ACLU website is available to him and he has met the requirements to go forward to the ACLU or federal court.

Lt. Berrett stated seven pages have been withheld as protected. The records contained notes from committee members, investigators, and other people along with their identifiers. She stated the release of this information would pose a risk to the persons involved, the security system, and the prison population.

Questions from the Committee:

The Committee asked a clarifying question about how Corrections decisions are made relevant to the jail.

Ms. Mitchell stated correctional institutions classify people based on security risk. This determines the housing. Those types of records were retained. She stated they classify their records the way the Department of Corrections does. She stated prisoners do not have a due process right to their classification unless there is substantial hardship. It cannot be appealed. She stated Mr. Movahhed can go to the ACLU.

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Petitioner Closing:

Mr. Movahhed stated he was in supermax for eleven months based on hearsay. He stated he wants to know why he was there for so long.

Questions from the Committee:

The Committee asked if he went through a grievance process. Mr. Movahhed stated he did. He stated the only thing the process told him was he was there for his safety and security and the safety of the jail.

Respondent Closing:

Ms. Mitchell stated the seven pages that have been classified protected will not provide the information Mr. Movahhed is looking for. She stated this appeal is about the seven pages classified as protected. She stated the petitioner is not in the facility anymore and releasing the information would set a bad precedent. The petitioner has another arena to use in federal court if he feels his constitutional rights were violated.

Deliberation:

Motion by Mr. Williams to deny the appeal because the records are properly classified under 63G-2-305(13). Seconded by Ms. Richardsdon.

Vote: Aye 6. Nay: 0. Mr. Williams, Mr. Fleming, Ms. Richardson, Mr. Haraldsen, Ms. Dean, and Ms. Smith-Mansfield voted in favor of the motion.

The hearing concluded. An order will be issued within seven business days and both parties will receive a copy of the order. Each party has 30 days to appeal the Committee's decision to district court.

The Committee sauntered for 15 minutes. Ms. Richardson left the meeting.

2. Patrick Sullivan v. Utah Department of Corrections

The Chair Pro Tem announced the hearing and provided instructions and reviewed the procedures.

The petitioner requested the hearing be postponed because he has not received materials from the respondent.

Motion by Mr. Williams to postpone to the next available date. Seconded by Mr. Fleming.

Vote: Aye 5. Nay: 0. Mr. Williams, Mr. Fleming, Mr. Haraldsen, Ms. Dean, and Ms. Smith-Mansfield voted in favor of the motion.

The Committee left for lunch and reconvened at 11:45 am.

3. McDonald v. Utah Department of Corrections

The Chair announced the hearing and provided instructions and reviewed the procedures.

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Petitioner's Statements:

Mr. McDonald introduced himself as legal representation for Mr. Bascomb. He stated Mr. Bascomb is black, an inmate, and sought treatment at the State Mental Hospital in Provo after a breakdown precipitated by events in the prison. He stated he needed the records to properly assist his client.

Mr. McDonald stated he received more than 1,000 pages. He stated there are many redactions with no indication of what is redacted. He stated the redactions are whited out, so he cannot tell if something is blank or redacted.

Mr. McDonald stated there are four issues. First, the mental health records were improperly classified as controlled. Second, the photos and videos were improperly withheld as protected. The housing information was improperly withheld as protected. Fourth, the names of the other inmates were improperly withheld as private.

Mr. McDonald reviewed the exhibits sent to the Committee. He stated the incident report has graphic descriptions and it names the officers therefore there is no risk in releasing the video. He asked the full report be unclassified. He stated he needed the photos of prisoners to verify they're white nationalists. Mr. McDonald stated there is public interest in the use of force and racism in the prison.

Respondent's Statements:

Mr. Anderson stated the department agrees the allegations should be investigated. He stated the requested records contain names and location data that could endanger Mr. Bascomb and other inmates if released. He stated they did specify what was redacted in the denial letter. He stated security concerns were the paramount reason for redaction.

Mr. Anderson stated mental health records are withheld so care providers can be forthcoming in their notes. He stated a court can put a protected order over records so it's only for the attorney's eyes. Otherwise the release of the records would mean Mr. Bascomb is entitled to them. He stated a court needs to seal the records because for all purposes, the inmate himself is requesting the records.

Questions from the Committee:

Committee asked about the redactions and white out. Mr. Anderson stated there is blank information that is later in the incident report.

Petitioner Closing:

Mr. McDonald stated they are not asking for the mental health records to be public, but private. He stated it is speculation that the release of the information would be bad for the subject's mental health.

Respondent Closing:

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Mr. Anderson stated there is a chilling effect on treatment providers if these records are released. He stated he was unable to arrange medical testimony due to the pandemic. He recommended the court address access to the records.

Deliberation:

Motion by Mr. Fleming to deny the appeal because the records are appropriately classified. Seconded by Ms. Dean.

Discussion to the motion:

The Committee reviewed previous cases regarding mental health records and designations being changed from protected to private. Mr. Fleming stated he was persuaded this was a question for the court. Ms. Smith-Mansfield suggested the order cite previous orders.

Vote: Aye: 5 Nay: 0. Mr. Williams, Mr. Fleming, Mr. Haraldsen, Ms. Dean, and Ms. Smith-Mansfield voted in favor of the motion.

The hearing concluded. An order will be issued within seven business days and both parties will receive a copy of the order. Each party has 30 days to appeal the Committee's decision to district court.

4. Singleton v. Weber Human Services

Mr. Singleton could not be connected to the meeting. The Chair asked if anyone wanted to bring forth a motion to postpone. Committee determined to proceed using the materials already provided. The Chair asked the Executive Secretary to continue to attempt to connect the petitioner. The Chair announced the hearing, and provided instructions and reviewed the procedures.

Respondent's statements:

Ms. Jenson stated they queried their entire email system and sent the petitioner everything with his name. She stated they provided more than requested but found nothing specific to the request.

Interested third party statement:

Mr. Glum stated the bottom line is they don't know if everything has been provided. All they have is the respondent's word. He stated the Committee is not following policy by not having an anchor location or not granting the petitioner's request for an in-person meeting.

Respondent closing:

Ms. Jenson stated they know verbal conversations took place. She stated they do not have access to records of computer usage because those are in the City of Roy's custody. She doesn't know what else they can do to fulfil this request.

Question from the Committee:

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The Committee asked if she is saying there are no other records to provide because no other records exist. Ms. Jenson said that's correct.

Motion by Mr. Williams to deny the appeal because all responsive records have been provided. Seconded by Mr. Fleming.

Vote: Aye: 5 Nay: 0. Mr. Williams, Mr. Fleming, Mr. Haraldsen, Ms. Dean, and Ms. Smith-Mansfield voted in favor of the motion.

The hearing concluded. An order will be issued within seven business days and both parties will receive a copy of the order. Each party has 30 days to appeal the Committee's decision to district court.

BUSINESS Part 2 of 2

Report on Cases in District Court: Paul Tonks, Assistant Attorney General, provided updates on the current appeal cases under judicial review.

Motion to Adjourn

The Chair adjourned the June 11, 2020, State Records Committee meeting at 1:44 p.m.

This is a true and correct copy of the July 9, 2020, SRC meeting minutes, which was approved on August 13, 2020. An audio recording of this meeting is available on the Utah Public Notice Website at <https://archives.utah.gov>.

X /e/ Rebekkah Shaw
Executive Secretary